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In the Supreme Court of the United States

October Term, 1938

No. 295

H. P. WELCH COMPANY,
Appellant,

vs.

THE STATE OF NEW HAMPSHIRE,
Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

BRIEF OF APPELLEE

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No. 295

H. P. WELCH COMPANY,
Appellant,

vs.

THE STATE OF NEW HAMPSHIRE,
Appellee.

BRIEF OF APPELLEE

STATEMENT OF THE CASE

This appeal from a final decision of the Supreme Court of The State of New Hampshire (*H. P. Welch Company* v. *State*, 89 N. H. , 199 Atl. 886) presents two issues:

1. Do Sections 3 and 4 of Chapter 106 of New Hampshire Laws of 1933 deprive the appellant corporation of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States by establishing certain exemptions from the regulatory provisions of an act relating to carriers of property for hire on the public highways?

2. Are the provisions of Section 8 of Chapter 106 of New Hampshire Laws of 1933 relating to the operation of motor vehicles for hire on the highways of the State by drivers who have been on duty for more than twelve hours in conflict with Section 204 (a) of the Motor Carrier Act of 1935, 49 Stat. 546, 49 U.S.C.A. 304 (a) and therefore repugnant to the commerce clause of the Constitution of the United States?

The New Hampshire statute relating to carriers of property for hire on the public highways was enacted May 6, 1933 to take effect July 1, 1933. The Motor Carrier Act of 1935 was approved August 9, 1935 to take effect and be in force on and after the first day of October 1935. On April 13, 1937 the Public Service Commission of The State of New Hampshire ordered the appellant company to show cause why its common and contract carrier registrations should not be revoked for requiring or permitting its drivers to operate its motor vehicles for the carriage of property for hire on the highways of New Hampshire after the drivers had been continuously on duty for more than twelve hours. (R. 1). In all the operations in which the alleged violations occurred there were being carried on the trucks some interstate shipments, but it was the practice of the appellant to carry intrastate shipments on the same trucks. (R. 2). After a hearing on May 1, 1937, the State Commission, on December 11, 1937, (R. 1, 2), found the appellant guilty of the alleged violations during the latter part of 1936 and early 1937 (R. 1, 2), and suspended appellant's registrations to operate in intrastate commerce in New Hampshire for a five day period. (R. 2). At the hearing it appeared that appellant does both an intrastate and an interstate business over public highways in New Hampshire. (R. 1).

Thereafter on December 29, 1937, the Interstate Commerce Commission issued an order approving, adopting and prescribing rules and regulations in the matter of maximum hours of service of motor carrier employees effective July 1, 1938. Interstate Commerce Commission, 3 Motor Carrier Cases 665, 690. Appendix II. The Commission has twice postponed the effective date of its rules and regulations since issuing its original order and if the date is not put off again they will become effective December 31, 1938. Interstate Commerce Commission: *Ex parte No. MC 2* July 12, 1938, September 26, 1938.

At no point in this proceeding has appellant challenged the validity of the New Hampshire statute under the com-

merce clause, Constitution of the United States Article I. § 8, clause three, as either imposing an undue burden on interstate commerce or discriminating against it in the absence of Federal legislation touching the same subject matter. (R. 2, 25).

SUMMARY OF THE ARGUMENT

I. The New Hampshire Court correctly held that the New Hampshire Statute does not deprive appellant of the equal protection of the laws.

A. The first classification in favor of persons transporting produce owned or manufactured by their own labor is lawful.

B. The next exemption in the statute of motor vehicles not principally engaged in the transportation of property for hire violates no provision of the Constitution.

C. The final exemption embracing motor vehicles operating exclusively within the limits of a single city or incorporated town or within ten miles of the limits thereof or motor vehicles operating beyond such ten mile limit on occasional trips not exceeding two trips in any thirty day period is reasonable.

II. The Court below did not err in holding that the State Statute had not been superseded by the Motor Carrier Act of 1935.

A. The Motor Carrier Act does not prevent the States from regulating intrastate commerce and the order of the Public Service Commission of New Hampshire is a regulation of intrastate commerce alone.

B. But if the New Hampshire Statute does touch and affect interstate commerce, until Congress acts the states may adopt reasonable regulations govern-

ing interstate and intrastate motor vehicle traffic alike which are calculated to protect the lives and property of their citizens.

C. The mere enactment of the Motor Carrier Act of 1935 by Congress did not supersede the New Hampshire law.
   1. The state law and the rules and regulations promulgated pursuant to the federal statute do not deal with the same subject matter.
   2. Congress has no power to regulate matters purely of local concern under the guise of regulating commerce.
   3. Yet if it should be held that Congress has assumed to act in a field traditionally reserved to the states, partial regulation under Federal authority does not exclude state action from the same field.

ARGUMENT

I.

THE NEW HAMPSHIRE COURT CORRECTLY HELD THAT THE NEW HAMPSHIRE STATUTE DOES NOT DEPRIVE APPELLANT OF THE EQUAL PROTECTION OF THE LAWS.

The classifications established by the statute rest upon reasonable and substantial grounds of distinction. So long as differences in treatment proceeding from exemptions in a statute are not capricious or arbitrary there is no denial of the equal protection of the laws. These well established principles apply with particular force to legislative endeavors to regulate the use of the public highways. Differences in the physical contour of the land over which roads are built and variations in the width, grade and curvature of the way itself are equalled only by the infinite variety of motor vehicles passing to and fro across the roads of the nation. Accordingly, legislatures have generally taken account of the differences in operation and public risk grow-

ing out of the multitude of distinct types of motor vehicles using the highways. The use of some vehicles has been burdensome and dangerous; the traffic of others has been infrequent and safe. Most legislative action has taken reasonable account of the distinctions. This choice is not lightly to be disregarded. As this court observed in *Sproles* v. *Binford,* 286 U. S. 374, 388:

> "When the subject lies within the police power of the state, debatable questions as to reasonableness are not for the courts but for the legislature, which is entitled to form its own judgment, and its action within its range of discretion cannot be set aside because compliance is burdensome."
>
> *Hodge et als* v. *Cincinnati,* 284 U. S. 335;
> *Morf* v. *Bingaman,* 298 U. S. 407.

It is interesting to note that the Federal Motor Carrier Act, 49 Stat. 545, 49 U.S.C.A. 303(b) contains as to certain of its provisions other than hours of service all the exemptions criticized here in the State statute and many more besides. The State statute presents three classifications to which the appellant objects and which in substance are of a sort frequently reviewed by this court.

A. *The First Classification in Favor of Persons Transporting Produce Owned or Manufactured by Their Own Labor is Lawful.*

Without doubt the legislature considered that the use of the highways by such people would neither expose the roads themselves to such use and wear nor the public to such danger to life and limb as the use of people like the appellant who make the highways their place of business. It is established that common carriers by motor vehicle in interstate commerce may properly be charged an extra tax for their special use of the highways. *Clark* v. *Poor,* 274 U.S. 554, 557. Again it has been said with reference to classification for tax purposes

> "that the legislature may graduate the fees according to the propensities of the vehicles to injure or to destroy the public highways, and may exempt those with respect to which this tendency is slight or nonexistent, cannot be doubted . . . It is for the legislature to draw the line between the two classes." *Carley & Hamilton, Inc. et al* v. *Snook*, 281 U. S. 66, 72.

In the case of *Continental Baking Company* v. *Woodring*, 286 U. S. 352 it appeared that a Kansas statute regulating the whole field of commercial motor vehicle transport exempted from its requirements the transportation of live stock and farm produce to market by the owner thereof or supplies for his own use in his own motor vehicle. This classification was held to be constitutional because the use of highways for the transportation of farm products by the owner is casual, infrequent and incidental. To extend the exemption in favor of all persons transporting their own products whether they are farm products or not is but to include within the exemption every person in the same classification. The distinction between casual, infrequent and incidental use and habitual and continual use is not destroyed thereby. In the case of *Hicklin* v. *Coney*, 290 U. S. 169, a provision of a South Carolina statute regulating motor vehicle contract carriers was considered. That statute exempted farmers and dairymen hauling farm and dairy products for compensation. Persons hauling their own products in their own motor vehicles as in this case and the *Woodring* case, supra, were not within the statute at all. This court remarked that the exemptions in the *Hicklin* case were not as limited as the ones in *Continental Baking Company* v. *Woodring* but held that the exemption as construed by the state court to apply only to farmers and dairymen who do occasional hauling was not unconstitutional. This case is clearly authority to declare that the New Hampshire exemption that persons transporting products of their own manufacture and labor is *a fortiori* not a denial of the equal protection of the laws.

Aero Mayflower Transit Company v. *Georgia Public Service Commission*, 295 U. S. 285.

The case of *Smith* v. *Cahoon*, 283 U. S. 553 should be distinguished. In that case the object of the statute was the protection of the traveling public from negligent motor vehicle operation. An exemption therefrom depended upon a classification of the cargo carried without any reference whatever to the likelihood that the cargo would cause the injury that the statute was designed to guard against. So long as the cargo of a truck is not of itself dangerous like inflammable products or explosives, the danger to the highways and the people using them is just as great if the cargo happens to be farm products, fish or oysters as it would be if the load were bread or sugar, tea or coffee. If it could have been shown, as it has been in this case, that the classification had a reasonable relation to the object of the statute the result would have been different as the court pointed out in *Aero Mayflower Transit Company* v. *Georgia Public Service Commission*, supra.

B. *The Next Exemption In The Statute, of Motor Vehicles Not Principally Engaged In The Transportation of Property For Hire Violates No Provision of the Constitution.*

Such an exemption has several times been presented here. The uniform holding has been that it does not deny the equal protection of the laws. It was said in *Packard* v. *Banton*, 264 U. S. 140, 144:

> "The streets belong to the public and are primarily for the use of the public in the ordinary way. Their use for the purposes of gain is special and extraordinary and, generally at least, may be prohibited or conditioned as the legislature deems proper."

In that case an objection was raised to a New York statute because it did not require private operators to furnish the same liability insurance as that required from persons in

the business of carrying passengers for hire in motor vehicles. The objection was not sustained because this court held the classification to be constitutional. In *Bekins Van Lines* v. *Riley,* 280 U. S. 80 it appeared that the state of California levied a tax at a different and more burdensome rate upon carriers over regular routes and between fixed termini than it did upon other carriers by motor vehicle both common and private. This court held the statute to be constitutional and remarked at page 82 that

> " . . . marked distinction exists between common and private carriers by auto vehicles . . . , "

and the court further said on the same page,

> "Their [the objecting parties] use of the highways probably will be regular and frequent and, therefore, unusually destructive thereto; also it will expose the public to dangers exceeding those consequent upon the occasional movements of other carriers."

Another case sustaining a classification based upon heavy use of the highways is *Alward* v. *Johnson,* 282 U. S. 509, 513 where the court said

> "the distinction between property employed in conducting a business which requires constant and unusual use of the highways, and property not so employed, is plain enough."

To the same effect is *Hicklin* v. *Coney,* supra.

The appellant argues that the foregoing classifications are invalid because the total volume of "shipper-owner" or private carrier traffic is large. The reasoning is fallacious because the appellant ignores the fact that the total number of "shipper-owners" or private carriers may be proportionately greater than the traffic moved by them. In other words, to show that the carriers subject to the New Hampshire act move only a part of the total traffic by no means demonstrates that *as a class* they do not create a greater

risk to the public safety than private carriers *as a class*. The exempted groups may contribute to the evil against which the legislature acted, but it is quite clear that on the whole their enhancement of highway risks must be less than that of a class whose business is highway travel. The pressure of competition, moreover, is less upon the private carrier than it is upon the carrier who makes transportation his business. Although the business of a private carrier may be competitive, transportation usually will be only incidental to some primary activity in which the stress of competition largely will be felt. With the common or contract carrier, however, tendencies to short cut safety and labor costs will appear directly as enhanced risks upon the public highway. Different treatment of the shipper-owner and the private carrier is, therefore, justified.

C. *The Final Exemption Embracing Motor Vehicles Operating Exclusively Within The Limits of a Single City or Incorporated Town or Within Ten Miles of the Limits thereof or Motor Vehicles Operating Beyond Such Ten Mile Limit on Occasional Trips Not Exceeding Two Trips in Any Thirty Day Period Is Reasonable.*

The necessity for regulation may be much less within the limits of a city than it is upon the trunk lines traversing sparsely settled territory. Cities commonly maintain extensive police establishments to regulate traffic within their limits and equally specialized highway or engineering departments to repair and keep up the physical property. The requirements of separate communities may differ and a legislature may well conclude that it is desirable to preserve local authority to regulate traffic. How far beyond the actual bounds of the city this area of local control should be limited is a question of drawing a line that should be left to the legislature so long as its determination is within reason. In *Continental Baking Company* v. *Woodring*, supra, an exemption of this sort was considered and approved. It was there pointed out that the "penumbra of

town" may extend even to twenty-five miles from its limits. It is impossible to say that differences between local and through traffic with respect to operation and traffic conditions do not present a reasonable basis for classification. *Atlantic Coast Line Railroad* v. *Georgia,* 234 U. S. 280; *Sproles* v. *Binford,* supra; *Aero Mayflower Transit Company* v. *Georgia Public Service Commission,* supra.

II.

THE COURT BELOW DID NOT ERR IN HOLDING THAT THE STATE STATUTE HAD NOT BEEN SUPERSEDED BY THE MOTOR CARRIER ACT OF 1935.

A. *The Motor Carrier Act does not Prevent the States From Regulating Intrastate Commerce and the Order of the Public Service Commission of New Hampshire is a Regulation of Intrastate Commerce alone.*

Section 202 of the Motor Carrier Act is entitled "Declaration of Policy and Delegation of Jurisdiction". It provides in part, Sec. 202(c):

> "Nothing in this part shall be construed to affect the powers of taxation of the several States or to authorize a motor carrier to do an intrastate business on the highways of any State, or to interfere with the exclusive exercise by each State of the power of regulation of intrastate commerce by motor carriers on the highways thereof".

The New Hampshire commission merely suspended the appellant's registration certificates "to lawfully transport property for hire in motor vehicles between points within this state either as a common or contract carrier". (R. 2, 23). Its interstate business was unaffected.

The act of the New Hampshire Commission was not an attempt to regulate interstate commerce indirectly. It is a permissible inference that in the course of the operations

when violations of the state law occurred intrastate commerce was involved. (R. 2). Part of appellant's business is intrastate. Had the New Hampshire Commission refused to grant an intrastate registration to appellant on request because of alleged violations of the New Hampshire statute in a business hitherto exclusively interstate a different case would be presented. It would be different in this essential particular, the state would be using its power to regulate intrastate commerce to govern the business of the appellant in interstate commerce. In accordance with established principles such regulation would be bad. *Western Union Tel. Co.* v. *Foster,* 247 U. S. 105, 114; *Frost Trucking Co.* v. *Railroad Commission,* 271 U. S. 583. Here, on the contrary, there is no such regulation. The state has merely suspended a right to do a kind of business over which it has full control because appellant has failed to observe in its conduct of that kind of business lawful local regulations. The appellant does not do an exclusively interstate business and the hours when its drivers, after twelve hours on duty, drove over New Hampshire highways may have been hours of doing intrastate as well as interstate business. So long as the direct object of regulation is intrastate commerce and so long as Congress is silent or, as here, has granted plenary authority over intrastate commerce, it is immaterial that the exercise of state power has a substantial indirect effect on interstate commerce. *Minnesota Rate Cases,* 230 U. S. 352, 402. Even if it should be held that the Motor Carrier Act became effectve in every respect on October 1, 1935, therefore, it would not avail the appellant. The Act expressly reserves all control over intrastate commerce to the states and the New Hampshire Commission has done no more than to act under the power reserved.

Northern Pacific Ry. Co. v. *Washington,* 222 U. S. 370 is not in point. The federal statute involved there contained no such reservation of state power as that expressly set out in Section 202(c) of the Motor Carrier Act set out above. Language in that case applicable to state control over intrastate commerce has no proper application here.

B. ***But if the New Hampshire Statute Does Touch*** *and Affect Interstate Commerce, Until Congress* ***Acts the States May Adopt Reasonable Regulations Governing Interstate and Intrastate Motor*** *Vehicle Traffic Alike Which Are Calculated to Protect the Lives and Property of Their Citizens.*

Control of the use of the highways for such a purpose is not a matter requiring uniform treatment throughout the nation.

> "Few subjects of state regulation are so peculiarly of local concern as is the use of state highways. There are few, local regulation of which is so inseparable from a substantial effect on interstate commerce. Unlike the railroads, local highways are built, owned and maintained by the state or its municipal subdivisions. The state has a primary and immediate concern in their safe and economical administration. The present regulations, or any others of like purpose, if they are to accomplish their end, must be applied alike to interstate and intrastate traffic both moving in large volume over the highways. The fact that they affect alike shippers in interstate and intrastate commerce in large number within as well as without the state is a safeguard against their abuse." *South Carolina Highway Dep't* v. *Barnwell Brothers,* 303 U. S. 177.
>
> "Under our constitutional system, there necessarily remains to the states, until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction although interstate commerce may be affected. *Minnesota Rate Cases,* 230 U. S. 352, 402. States are thus enabled to deal with local exigencies and to exert in the absence of conflict with federal legislation an essential protective power. And when Congress does exercise its paramount authority, it is obvious that Congress may determine how far its regulation shall go. There is no constitutional rule which compels Congress to oc-

> cupy the whole field. Congress may circumscribe its regulation and occupy only a limited field. When it does so state regulation outside that limited field and otherwise admissible is not forbidden or displaced. The principle is thoroughly established that the exercise by the State of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together.'" *Kelly* v. *Washington*, 302 U. S. 1, 9;

Townsend v. *Yeomans*, 301 U. S. 411.

The "grave dangers incident to the operation of motor vehicles" and the dangerous character of the machines themselves have thoroughly established the proposition that

> "In the absence of national legislation especially covering the subject of interstate commerce, the State may rightly prescribe uniform regulations adapted to promote safety upon its highways and the conservation of their use, applicable alike to vehicles moving in interstate commerce and those of its own citizens." *Morris* v. *Duby*, 274 U. S. 135, 143;

Hendrick v. *Maryland*, 235 U. S. 610; *Kane* v. *New Jersey*, 242 U. S. 160; *Clark* v. *Poor*, supra; *Hodge et al* v. *Cincinnati*, supra; *Continental Baking Co.* v. *Woodring*, supra; *Sproles* v. *Binford*, supra; *Bradley* v. *Public Utility Commission*, 289 U. S. 92; See: *Sprout* v. *South Bend*, 277 U. S. 163, and as to the power of the state to deal with the specific problem of hours of service in the absence of congressional action. *Northern Pacific Ry. Co.* v. *Washington*, *Supra*. It is the plain implication of this case that state regulation of the hours of labor of the employees of interstate carriers is lawful until Congress acts.

It should be made plain that the appellant has not challenged the statute as a direct burden on interstate commerce or as a discrimination against such commerce. The

authorities cited above clearly establish that a regulatory statute like the present one neither directly burdens interstate commerce nor discriminates against it. Even if the question were not otherwise foreclosed, the failure of the appellant to set forth this ground of objection to the statute in his statement as to jurisdiction would prevent its consideration now. *Bradley* v. *Public Utility Commission*, supra, at page 97.

C. *The Mere Enactment of the Motor Carrier Act of 1935 by Congress Did Not Supersede the New Hampshire Law.*

1. ***The state law and the rules and regulations promulgated pursuant to the federal statute do not deal with the same subject matter.*** The hours of service regulations adopted by the interstate commerce commission are found in Interstate Commerce Commission Reports, 3 Motor Carrier Cases, 665, 690 and on page 29 of an appendix to this brief. The material portions of the state statute are set out on pages 5 and 6 of the record and it is printed in full beginning on page 33 hereof. Comparison of the federal regulations with the state statute reveals that the provisions adopted under authority of the Motor Carrier Act were confined to the length of time that individuals operating motor carriers in interstate commerce should work whether they drive or not. The New Hampshire statute, on the contrary, is indifferent to hours of labor as such. Its only concern is that no one shall drive who has been continuously on duty for more than twelve hours. In short, the federal regulation governs the operation and equipment of the instrumentalities of interstate commerce and the hours of service of the individuals working with them; the state law protects the people of New Hampshire from injury to person and property by tired drivers. It regulates driving only and leaves hours of service wholly unregulated. An employee of a motor carrier might work forever without rest and violate no provision of the New Hampshire law so long as he did not drive after having

been exposed to the risk of undue fatigue. To this extent the heading of Section 8 of the New Hampshire law is a misnomer and it should be regarded as nothing more than what it obviously was intended to be, a heading for convenience.

Section 204 (a) of the Motor Carrier Act authorizes the Interstate Commerce Commission to establish reasonable requirements with respect to qualifications and maximum hours of service of employees. Section 8 of Chapter 106 of New Hampshire Laws of 1933 has no such limiting application so far as highway safety is concerned as "employee". The word there used is "driver", a term of much broader scope for it includes owner operators and other independent carriers who are the employees of no one. It is somewhat surprising to see that the Interstate Commerce Commission adopted it in its regulations despite the limitation of its authority to "employees" in the statute.

This difference is further proof that the two laws do not deal with the same subject. In a young and highly competitive industry like the motor carrier business employees must be protected against the abuse of unduly long hours of labor. This is the primary aim of the federal hours of service regulations. The regulations of the Interstate Commerce Commission cannot expand the word "employee" in the statute by abandoning it in favor of the word "driver" in its regulations. The Interstate Commerce Commission as well as the legislature of New Hampshire may have recognized that the danger to the public is as great from tired operators who are not employees as it is from ones who are. Such recognition by the Commission does not alter the fact that Congress elected to deal only with the problem of protecting the employee and left the broader protective field to the states.

The foregoing construction of the statutes is buttressed by the principle that where the matter is in doubt the solution will be preferred that does not raise grave constitutional questions.

"Where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter." *United States* v. *Delaware & H. Co.*, 213 U. S. 366, 408. *State of Texas* v. *Eastern Texas R. R. Co.*, 258 U. S. 204, 217.

2. *Congress has no power to regulate matters purely of local concern under the guise of regulating commerce.* The appellant contends for such a broad construction of the Motor Carrier Act that this serious issue is necessarily raised. To one view anything that exists or happens in the nation may remotely or indirectly affect interstate commerce. Such possibilities are not enough to sustain the exercise of Congressional authority where the subjects of regulation are essentially matters of local concern and divorced from interstate commerce. *Hammer v. Dagenhart*, 247 U. S. 251; A.L.A. *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495; *Carter* v. *Carter Coal Co.* 298 U. S. 238. In the case of *National Labor Relations Board* v. *Jones and Laughlin Steel Corp.* 301 U. S. 1, 37 in which the federal statute was sustained it was nevertheless acknowledged that the power of Congress is limited. The Court said:

"Undoubtedly the scope of this power [the commerce power] must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government. . . . The question is necessarily one of degree.

In this case appellant urges a breadth of Congressional power that might authorize the appellant to defy the command of a stop light erected under state authority, render

its agents immune from prosecution under the common law of many states for the crime of manslaughter if their reckless driving happened to be in interstate commerce, and direct it to operate its heavy vehicles at a rate of speed not only dangerous to the public highway and persons and property upon or adjoining it but also contrary to every locally tested canon of reasonableness. Neither the Safety Regulations, Interstate Commerce Commission, 1 Motor Carrier Cases 1, nor the Hours of Service Regulations, supra, should be considered as manifestations of national power to take from the states the exercise of such an essentially local function as the routing of traffic on the city streets. Local ordinances to prevent accidents at crossings, to safeguard pedestrians, to avoid the congestion of streets and to provide access to the retail shops of local merchants have such a remote and indirect effect on interstate commerce that Congress has no power to set them aside so long as they are non-discriminatory, reasonable efforts to protect the local welfare. Congress has not assumed such a sweeping dominion over purely local affairs. Its action must be limited to the proper object of national solicitude, the hours of service and the safety of operations and equipment of the employees of interstate carriers. The public is no more than the incidental beneficiary of this legislation. Its protection is left to the states. Thus the apparent conflict between the national and local statute in this case is resolved and each may be effective in its legitimate sphere. Much clearer expressions of Congressional intent than exist in the Motor Carrier Act should appear before it is held that Congress has tried to destroy the police power of the states, to make all interstate traffic violations federal offenses and to leave interstate carriers free to flout all local regulations. The construction of the Motor Carrier Act now urged avoids the necessity of passing on the validity of such an attempt.

The operation of a Federal statute should not be extended by implication to supersede a legitimate exercise of the state police power directly aimed to protect the lives and

property of its citizens in a sphere most efficiently governed by local regulation.

> "In construing Federal statutes enacted under the power conferred by the commerce clause of the Constitution the rule is that it should never be held that Congress intends to supersede or suspend the exercise of the reserved powers of a State, even where that may be done, unless, and except so far as, its purpose to do so is clearly manifested." *Illinois Central R. R.* v. *Public Utilities Commission*, 245 U. S. 493, 510 and cited cases.

Of the serious dangers to interests generally shielded by state protection there is no doubt. *Hess* v. *Pawloski*, 274 U. S. 352. It is likewise true that the chief problem of motor vehicle operation, protection against accidents, is ordinarily a local one. *Bradley* v. *Public Utilities Commission*, supra at page 95.

3. *Yet if it should be held that Congress has assumed to act in a field traditionally reserved to the states, partial regulation under Federal authority does not exclude state action from the same field.* *Reid* v. *Colorado*, 187 U. S. 137; *The Minnesota Rate Cases* (*Simpson* v. *Shepard*) supra; *Savage* v. *Jones*, 225 U. S. 501; *Mintz* v. *Baldwin*, 289 U. S. 346. The court has recently said that where the State exercises its power to protect the lives and health of its people the application of the principle elaborated in the foregoing cases is fortified. *Kelly* v. *Washington*, supra at page 13. In view of the deadly character of automobile traffic the present case is without doubt in the group where this court will find most reluctantly that state power is at an end.

A rule that the existence of federal legislation, under which the subject of a state statute may some day be regulated, of itself, without such regulation in fact, supersedes the local law would have the most unfortunate practical consequences. It might often leave violent and dangerous

activities without any restraint at all. In the present case, for example, there were during 1936, the first year after the Motor Carrier Act became law, six hundred and eleven employees of the Interstate Commerce Commission stationed outside Washington. *Statistical Abstract of the United States (1937) p. 154.* At the same time there was in the continental United States three million nine thousand sixty-six miles of rural highway traversed by four million twenty-four thousand trucks and tractors moving among more than twenty-four million other motor vehicles. *Statistical Abstract of the United States (1937)* pp. 357, 363. Not all the trucks and tractors engaged in interstate commerce, it is true, but enough of them so moved to determine in a large measure the characteristics of highway travel. No doubt the staff of the Bureau of Motor Carriers of the Interstate Commerce Commission lately has been increased and now may approximate eleven hundred, but it is at least shocking to suggest that Congress intended at once to release interstate trucks from all state fetters and harness them with a corporal's guard not all of whom could possibly have been available for duty. There were in 1930 one hundred and thirty thousand policemen in the United States in addition to many thousand more detectives, inspectors and other enforcement officers. Fifteenth Census Vol. V. p. 20. It is common knowledge that a great part of the ordinary policeman's time is devoted to motor vehicle work. Comparison of this army of enforcement with the petty staff of the Interstate Commerce Commission shows the absurdity and the danger of supersedure until Federal regulation is effective.

Yet this is the rule for which the appellant argues. Because the Motor Carrier Act authorized the Interstate Commerce Commission to establish regulations governing safety of operation and hours of service and because the act was effective October 1, 1935, no interstate carrier could thereafter be convicted in a state court of speeding, of driving under the influence of liquor, of reckless driving or of driving after a long time on duty. It is hard enough

to contemplate the possibility that action by the Interstate Commerce Commission may divest the states of control in this familiar field; it goes beyond reason to say that the mere existence of federal legislation was a Congressional mandate that anarchy should prevail.

The appellant relies on the case of *Northern Pacific Ry.* v. *Washington, supra.* It is to be distinguished. The federal statute there involved was self executing. 34 Stat. 1415. Of itself it was complete. It established the hours of labor on trains moving in interstate commerce without the intervening device of administrative regulations. Although there was an interregnum between the date of the passage of the federal law and the consequent supersedure of state regulation and the time when it became effective, the Congressional scheme of control was complete when the act was passed. Quite unlike the present case, nothing remained to be done. Here Congress has recognized that the variety of traffic on the almost limitless web of public highways in the county would require years of thorough administrative investigation before its plan of regulation would be complete. The Motor Carrier Act is a direction to regulate, not itself a regulation.

Similarly another case advanced by the appellant to support its contentions presents facts essentially different from the ones found here. *Napier* v. *Atlantic Coast Line,* 272 U. S. 605. In that case, even though the Interstate Commerce Commission had made no specific orders covering fire box doors and cab curtains the Federal Locomotive Boiler Inspection Act, 36 Stat. 913 as amended, 38 Stat. 1192 and 43 Stat. 659 was a clear expression of Congressional intent to occupy the whole field of establishing requirements for the safe equipment of locomotives operating on interstate railways. There were in that Congressional act no such reservations and limitations as appear in the Motor Carrier Act. The reservation of power to regulate intrastate commerce by motor carriers has been pointed out already. Section 216 (e) of the Act forbids the Interstate Commerce Commission to prescribe any intrastate

rates whatever. Furthermore Congress recognized the local aspect of much of the motor carrier business. The administration of the Motor Carrier Act is to be one of cooperation between the Federal and State authorities. Section 202 (a). Under Section 205 (b) Congress requires the Commission to refer most cases in which not more than three states are involved to a joint board "composed solely of one member from each State" with assistants who may be appointed by the Interstate Commerce Commission. There is no doubt that Congress recognized that the public interest in uniform national regulation did not entirely overbalance the vital local concern in heavy use of the public highways. The States have a much greater stake in the control of highway traffic than they have in fire-box doors and cab curtains. They are things that but remotely affect the lives of a few citizens; highway traffic is the immediate hazard of almost every man. Consequently the *Napier* case is no authority for a decision in this case.

Even if the regulations of the Interstate Commerce Commission will, when effective, supersede the state law, there has been no supersedure in this case because the federal regulations were not in effect. It is a fact that the Hours of Service Regulations of the Commission insofar as they affect common and contract carriers of property and their employees will not be effective until December 31, 1938. Interstate Commerce Commission, *Exparte No. MC–2*, Sept. 26, 1938. There was, therefore, no effective federal regulation at the time of appellant's offense, its trial, or the hearing of its appeal by the State Supreme Court. The rules and regulations were first issued December 29, 1937 to be effective July 1, 1938. Interstate Commerce Commission, 3 Motor Carrier Cases 665. Even the date of issue was later than the offense of the appellant and its trial and the order of the New Hampshire Public Service Commission. The original date when the federal regulations were to become effective has been twice postponed since the original order of December 29, 1937. Interstate Commerce Commission, *Exparte No. MC–2*, July 12, 1938

and September 26, 1938. In a case of this kind there is no supersedure until federal regulation becomes effective. *Atlantic Coast Line R. R.* v. *Georgia,* supra; *Vandalia R. R.* v. *Public Service Commission,* 242 U. S. 255.

The mere grant of authority by Congress to the Commission to establish reasonable requirements with respect to hours of service of employees standing alone does not supersede state action. It is conceded that there is no supersedure until Congress acts. The delegation of Congressional authority alone is not enough; there must be some action under the delegated power. Authorization of an agent is not equivalent to performance. This principle is well recognized. *Missouri Pacific Ry. Co.* v. *Larabee Flour Mills Co.,* 211 U. S. 612; *Smith* v. *Illinois Bell Tel. Co.* 133; *Northwestern Bell Telephone Company* v. *Railway Commission,* 297 U. S. 471. In the *Larabee* case it was said at page 623:

> "On the other hand, it is said that Congress has already acted, has created the Interstate Commerce Commission, and given to it a large measure of control over interstate commerce. But the fact that Congress has entrusted power to that commission does not, in the absence of action by it, change the rule which existed prior to the creation of the commission. Congress could always regulate interstate commerce and could make specific provisions in reference thereto, and yet this has not been held to interfere with the power of the State in these incidental matters. A mere delegation by Congress to the Commission of a like power has no greater effect, and does not of itself disturb the authority of the State . . . In other words the mere grant by Congress to the commission of certain national powers in respect to interstate commerce does not of itself and in the absence of action by the commission interfere with the authority of the State to make those regulations conducive to the welfare and convenience of its citizens."

In the case of *Smith* v. *Illinois Bell Tel. Co.*, supra, it was argued that the Illinois Commerce Commission had no jurisdiction over depreciation rates in connection with intrastate charges because the Interstate Commerce Act had superseded state action. The federal statute, 41 Stat. 493, 49 U.S.C.A. 20(5), provided that the commission should, as soon as practicable, prescribe for carriers subject to the Interstate Commerce Act (which included telephone companies) the classes of property for which depreciation charges may be included under operating expense and the percentage of depreciation for such classes of property. The statute then provided that the carriers should not charge to operating expense any depreciation charges on classes of property other than those prescribed by the Commission or charge a percentage of depreciation other than that prescribed by the Commission. This court held that the state regulation was not superseded because, although the Interstate Commerce Commission had the matter under consideration, a final determination had not been made. The case of *Northern Pacific Ry. Co.* v. *Washington,* supra, upon which appellant here relies was considered but found inapplicable. Until the Interstate Commerce Commission finally acted, the state prerogative to prescribe depreciation rates was not to be gainsaid. To the same effect is *Northwestern Bell Telephone Company* v. *Railway Commission,* supra at 480 where it was said:

> "In any event, we think that section 20(5) cannot be read as authorizing the Interstate Commerce Commission to supplant state power to regulate depreciation rates of telephone companies except by prescribing a rate administratively determined by the commission itself. A direction that the commission, as soon as practicable, prescribe depreciation rates, is hardly to be read as authority to permit the telephone companies to fix the rates for themselves in defiance of state power. The doubtful constitutionality of the statute so construed concludes our acceptance of such a construction".

Conclusion

For the reasons herein stated it is respectfully submitted that the New Hampshire statute does not deny appellant the equal protection of the laws and was not superseded at the time of appellant's offense by the Motor Carrier Act of 1935. The judgment of the court below should, therefore, be affirmed.

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APPENDIX I

EXCERPTS FROM THE MOTOR CARRIER ACT OF 1935

DECLARATION OF POLICY AND DELEGATION OF JURISDICTION

SEC. 202. (a) It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions, in such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense; and cooperate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this part.

(b) The provisions of this part apply to the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce and to the procurement of and the provision of facilities for such transportation, and the regulation of such transportation, and of the procurement thereof, and the provision of facilities therefor, is hereby vested in the Interstate Commerce Commission.

(c) Nothing in this part shall be construed to affect the powers of taxation of the several States or to authorize a motor carrier to do an intrastate business on the highways of any State, or to interfere with the exclusive exercise by each State of the power of regulation of intrastate commerce by motor carriers on the highways thereof.

SEC. 203 (b) Nothing in this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include (1) motor vehicles employed solely in transporting school children and teachers to or from school; or (2) taxicabs, or other motor vehicles performing a bona fide taxicab service, having a capacity of not more than six passengers and not operated on a regular route or between fixed termini; or (3) motor vehicles owned or operated by or on behalf of hotels and used exclusively for the transportation of hotel patrons between hotels and local railroad or other common carrier stations; or (4) motor vehicles operated, under authorization, regulation, and control of the Secretary of the Interior, principally for the purpose of transporting persons in and about the national parks and national monuments; or (4a) motor vehicles controlled and operated by any farmer, and used in the transportation of his agricultural commodities and products thereof, or in the transportation of supplies to his farm; or (4b) motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended; or (5) trolley busses operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service; or (6) motor vehicles used exclusively in carrying livestock, fish (including shell fish), or agricultural commodities (not including manufactured products thereof); or (7) motor vehicles used exclusively in the distribution of newspapers; nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the policy of Congress enunciated in section 202, shall the provisions of this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment apply to: (8) The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous mu-

nicipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, and provided that the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction; or (9) the casual, occasional, or reciprocal transportation of passengers or property in interstate or foreign commerce for compensation by any person not engaged in transportation by motor vehicle as a regular occupation or business.

GENERAL DUTIES AND POWERS OF THE COMMISSION

SEC. 204 (a) It shall be the duty of the Commission—

(1) To regulate common carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

(2) To regulate contract carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

(3) To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation, and to that end

prescribe qualifications and maximum hours of service of employees, and standards of equipment. In the event such requirements are established, the term "motor carrier" shall be construed to include private carriers of property by motor vehicle in the administration of sections 204 (d) and (e); 205· 220; 221; 222 (a), (b), (d), (f), and (g); and 224.

APPENDIX II

INTERSTATE COMMERCE COMMISSION

MOTOR CARRIER SAFETY REGULATIONS

Promulgated July 12, 1938

PART V.—HOURS OF SERVICE OF DRIVERS

Regulations prescribed under authority of section 204 (a), (1) and (2) of the Motor Carrier Act, 1935, with respect to maximum hours of service of drivers of motor vehicles operated in interstate or foreign commerce by common and contract carriers, including motor vehicles engaged in operations specified in section 203 (b) of said act, except paragraph (4a).

REGULATIONS EFFECTIVE OCTOBER 1, 1938

Rule 1

As used in these regulations:

(*a*) The term "motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof determined by the Commission, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails.

(*b*) The term "driver" means any individual who drives in transportation in interstate or foreign commerce any motor vehicle as defined in paragraph (a) above.

(c) A driver is on duty from the time he begins to work or is required to be in readiness to work until the time he is relieved from work and all responsibility for performing work. Time spent by a driver resting or sleeping in a berth as defined in paragraph (g) of this rule shall not be included in computing time on duty.

(*d*) The term "drive or operate" includes all time spent on a moving vehicle and any interval not in excess of 20

minutes in which a driver is on duty but not on a moving vehicle. It does not include time spent resting or sleeping in a berth as defined in paragraph (g) of this rule.

(*e*) The term "week" means any period of 168 consecutive hours beginning at the time the driver reports for duty, as defined in paragraph (c) of this rule.

(*f*) The term "24 consecutive hours" means any such period starting at the time the driver reports for duty, as defined in paragraph (c) of this rule.

(*g*) The term "berth" means a berth or bunk on the motor vehicle which is properly equipped for the purpose of sleeping, including springs and a mattress, or an innerspring mattress, pillow, adequate bed clothing, adequate ventilation, and ready means of entering and leaving the berth.

(*h*) Where any other terms used in these regulations are defined in section 203 (a) of the Motor Carrier Act, 1935, such definitions shall be controlling. Where terms are used in the regulations which are neither defined herein nor in said section 203 (a), they shall have the ordinary practical meaning of such terms.

Rule 2

Every motor carrier and his or its officers, agents, employees, and representatives shall comply with the following regulations, and every such motor carrier shall require that his or its officers, agents, employees, and representatives shall be conversant with these regulations.

Rule 3

(*a*) No carrier subject to these regulations shall permit or require any driver in his employ to remain on duty, as defined in paragraph (c) of rule 1, for a total of more than 60 hours in any week, as defined in paragraph (e) of rule 1; provided, however, that carriers operating vehicles on every day of the week may permit drivers in their employ to remain on duty for a total of not more than 70 hours in any period of 192 consecutive hours.

(*b*) No carrier subject to these regulations shall permit or require a driver in his employ to drive or operate a motor vehicle for more than 10 hours in the aggregate in any period of 24 consecutive hours, unless such driver be off duty for 8 consecutive hours during or immediately following the 10 hours aggregate driving and within said period of 24 consecutive hours; provided, however, that two periods of resting or sleeping in a berth, as defined in paragraph (g) of rule 1, may be cumulated to give the aforesaid total of 8 hours off duty.

Rule 4

No carrier subject to these regulations if himself a driver shall remain on duty or drive or operate for longer periods than those prescribed in rule 3 hereof for employed drivers.

Rule 5

Each carrier subject to these regulations, except carriers engaged in mass transportation and operating on frequent and regular schedules, shall require that a driver's log in duplicate shall be kept by every driver in his employ who operates a motor vehicle engaged in transportation in interstate or foreign commerce, and, if himself an owner-driver, shall keep such a log. Entries in said driver's log shall be made by the driver, and shall show the place of origin and destination of the trip, the times of reporting for duty and of going off duty, the periods of driving or operating and other work, and any other information found desirable.

Each carrier shall make monthly reports to the Bureau of Motor Carriers, Interstate Commerce Commission, Washington, D. C., prior to the fifteenth day of each succeeding month, of every instance where a driver has been required or permitted to be on duty or to drive or operate for hours in excess of those presribed by these regulations, and shall fully explain the reasons for and circumstances surrounding such violations. Such reports shall be in writing and sworn to.

Rule 6

In case of flood, storm, accident, or similar emergency, a driver may complete his run without being in violation of the provisions of these regulations, if such run would reasonably have been completed without violation except for the delay caused by such emergency.

Rule 7

These regulations shall not apply to any carrier subject thereto when transporting passengers or property to or from any section of the country with the object of providing relief in case of earthquake, flood, fire, famine, drought, epidemic, pestilence, or other calamitous visitation or disaster.

APPENDIX III

NEW HAMPSHIRE LAWS 1933

CHAPTER 106 AS AMENDED BY CHAPTER 169, LAWS OF 1933 REGULATION OF CARRIERS OF PROPERTY FOR HIRE ON THE PUBLIC HIGHWAYS

Section		Section	
1.	Declaration of policy	7.	Name of owner
2.	Common carrier registration	8.	Hours of service
3.	Contract carrier registration	9.	Fees
4.	Exemptions	10.	Operation by railroads
5.	Change of rates	11.	Revocation
6.	Public record	12.	Penalty

1. Declaration of Policy. The business of operating motor vehicles transporting property for hire on the highways of this state affects the interests of the public. The rapid increase in the number of motor vehicles so operated, and the fact that they are not sufficiently regulated, have increased the dangers and hazards on public highways, and regulation of common carriers and contract carriers as hereinafter defined is necessary to the end that highways may be rendered safer for the use of the general public; that the use of the highways for the transportation of property for hire may be restricted to the extent required by the necessity and convenience of the shipper and receivers of freight, and that the various transportation agencies of the state may be correlated so that public highways may serve the best interest of the general public.

2. Common Carrier Registration. No person, corporation, partnership, association, railroad or railway company, shall operate any motor vehicle, not running upon rails or tracks, upon any public highway transporting property for hire as a common carrier, between points within this state, without first obtaining a registration certificate and special

number plates from the public service commission (hereinafter called the commission). Said applicant shall file with the commission the following: I. The schedule of rates to be charged applying to the service of transportation to be rendered. II. An indemnity bond or insurance policy which shall adequately provide for the reasonable protection of the owner or owners of the property transported. III. The routes over the highways within the state over which it is proposed to operate said motor vehicle or vehicles as common carriers. IV. The fees required as hereinafter provided. If the indemnity bond or insurance policy are satisfactory the commission shall issue a registration certificate and special number plates. In cases where a common carrier has been rendering a substantially uninterrupted service, the operation may lawfully be continued pending issuance of the certificate if application is made within fifteen days of the effective date of this act.

3. Contract Carrier Registration. The term contract carrier as used in this act shall include every person, firm or corporation transporting property for hire by motor vehicle on any public way in this state other than common carriers, those transporting products of their own manufacture or labor and those exempted in section 4 of this act. Whether or not any person, firm or corporation is so transporting property shall be a question of fact. No contract carrier shall operate any motor vehicle for the transportation of property for hire on any public way between points within this state without first obtaining a registration certificate and special number plates from the commission. If any contract carrier operates upon any public way in this state in competition with any common carrier or common carriers, such contract carrier shall file with the commission the rates, rules or regulations applying to such service provided, however, that such filing shall not be necessary if property is to be transported for any common carrier when the rates charged the public for the transportation of such property are filed with the commission.

4. Exemptions. There shall be exempted from the provisions of this act: *I.* Motor vehicles not principally engaged in the transportation of property for hire. *II.* Motor vehicles operating exclusively within the limits of a single city or incorporated town or within ten miles of the limits thereof or motor vehicles operating beyond such ten-mile limit on occasional trips, not exceeding two trips in any thirty-day period. *III.* Motor vehicles while engaged exclusively in work for any branch of the government of the United States or for any department of this state, or for any county, city, town or village. *IV.* Motor vehicles engaged exclusively while in the delivery of the United States mail.

5. Change of Rates. No common or contract carrier shall charge, demand, exact, receive or collect for any service rendered an amount greater or less than the rates on file with the commission, provided, however, that any such carrier holding a registration certificate may file new rates, rules and regulations or change the highways over which it gives service by filing notice thereof with the commission.

6. Public Record. The records relating to each registration of common and contract carriers under this act shall be kept on file at the office of the commission and shall be available to the public at all reasonable times.

7. Name of Owner. No motor vehicle shall be operated on the highways of this state transporting property for hire unless it has printed on both sides of said vehicle in plain, legible printing the name and address of the owner and the weight of the vehicle and the gross weight for which said vehicle is registered by the motor vehicle commissioner.

8. Hours of Service. It shall be unlawful for any driver to operate, or for the owner thereof to require or permit any driver to operate, any motor vehicle for the transportation of property for hire on the highways of this state when the driver has been continuously on duty for

more than twelve hours, after a driver has been continuously on duty for twelve hours it shall be unlawful for him or for the owner of the vehicle to permit him to operate any such motor vehicle on the highways of this state until he shall have had at least eight consecutive hours off duty. It shall be unlawful for any driver to operate, or for the owner thereof to require or permit any driver to operate, any motor vehicle for the transportation of property for hire on the highways of this state when the driver has been on duty more than sixteen hours in the aggregate in any twenty-four-hour period, and when the driver has been on duty sixteen hours in any twenty-four-hour period it shall be unlawful for him to operate or for the owner thereof to require or permit him to operate a motor vehicle on the highways of this state until he shall have had at least ten consecutive hours off duty. Periods of release from duty herein required shall be given at such place and under such circumstances that rest and relaxation from the strain of the duties of the employment may be obtained. No period off duty shall be deemed to break the continuity of service unless it be for at least three consecutive hours at a place where there is opportunity for a rest. In case of an unforeseen emergency the driver or chauffeur may complete his run or tour of duty if such run or tour of duty, but for the delay caused by such emergency, would reasonably have been completed without a violation of this section. Provided, however, that the provisions of this section shall not apply to trucks while under the control of two licensed operators. The commission shall have authority to enforce the provisions of this section.

9. Fees. Each application for a registration certificate or special number plates for operation as a common carrier shall be accompanied by a fee of $5.00, except that the fee for the period ending December 31, 1933 shall be $2.50, such money to be used for the purpose of defraying the expenses of administering this act. A copy of said certificate and the special number plates shall at all times be displayed on each motor vehicle authorized by the com-

mission to operate under the provisions of the foregoing section. The charge for each additional plate and copy of registration certificate shall be $2.00. In the case of contract carriers the charge for registration certificate and special number plates shall be $2.00. Plates shall not be changed from one vehicle to another unless written notice thereof has been mailed to the commission. No certificate may be transferred or sold without the consent of the commission authorizing such transfer or sale. No certificate granted under this act shall be effective after the thirty-first day of December of the year of its issue. The renewals shall be issued upon application made in accordance with the Commission's requirements upon the payment of fees prescribed for original applications.

10. Operation by Railroads. A railroad operating motor vehicles not running upon rails or tracks upon the public ways, whether or not such operation is carried out by means of a subsidiary or subsidiary companies, shall be subject to the provisions of this act as to its rates and services, and as to such operation shall not be subject to the requirements contained in the statutes applying to common carriers by railroads as to rates and services.

11. Revocation. The commission shall have authority, after notice and hearing, to suspend or revoke any registration certificate issued in accordance with the provisions of this act for violation of the provisions of this act.

12. Penalty. Any person, corporation, partnership, association, railroad or railway company violating the provisions of this act or the orders of the commission issued under the provisions of this act shall be punished by a fine of not more than one hundred dollars, and the superior court shall have jurisdiction in equity to restrain any such violation upon petition of the commission, any public authority, or ten citizens of any city or town.

13. Takes Effect. This act shall take effect July 1, 1933.